DOCUMENT RESUME

ED 282 283 EA 019 322

AUTHOR Thurston, Paul W.
TITLE Legal Context of the Public School District.
INSTITUTION Association of School Business Officials International, Reston, VA.
PUB DATE 86
NOTE 25p.; Chapter 2 of "Principles of School Business Management" (EA 019 320).
PUB TYPE Information Analyses (070) -- Guides - Classroom Use - Materials (For Learner) (051) -- Legal/Legislative/Regulatory Materials (090)

EDRS PRICE MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS Constitutional Law; Court Litigation; Educational Administration; Elementary Secondary Education; Federal Legislation; Legal Responsibility; Power Structure; *Public Schools; *School Business Officials; School Districts; *School Law; State Legislation

ABSTRACT

This chapter of "Principles of School Business Management" explores the legal context in which school business officials and other school administrators operate. The chapter considers the legal sources for the power and authority of the district and its administrators and also examines the legal process as it affects schools and the performance of school business functions. The legal basis for the local school district's existence as a legal entity is examined first. The establishment of the district's authority and the legislative delegation of authority in different states are reviewed, as are administrative redelegation of authority (affecting contracts) and the sharing of authority with other agencies. Specific sources of authority or power are considered next, including federal and state constitutions, state boards of education, federal statutes, and contracts. A discussion of the district's legal liability concludes the chapter. State and federal court cases involving school business officials are cited and discussed as examples in relation to each of the topics addressed in the chapter. Eighty-eight notes, primarily citing the court cases discussed, are provided. (PGD)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☐ This document has been reproduced as received from the person or organization originating it.

☒ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL IN MICROFICHE ONLY HAS BEEN GRANTED BY

K. A. Allen

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

ED282283

2

Legal Context of the Public School District

Paul W. Thurston

The aspiring school business administrator probably does not consider legal knowledge an important area of cognitive information. Expertise in accounting, budgeting, insurance management and purchasing are just a few of the areas needed by school business officials. Legal knowledge or expertise is not typically part of the school business official's job description.

Legal knowledge is very specialized. Usually, one hires an attorney only when in trouble or in need of such specialized help. There are certainly special times when school officials must have access to attorneys and the specialized knowledge they provide. However, viewing legal knowledge in this light oversimplifies the status and role of the school business official. This view is compatible with that of the person who is a mere functionary, the person who does what one is told or one who does only that which his or her predecessor did ten, fifteen or twenty years ago. The functionary need not worry about the legal context of the school district or his or her position in it. Such a view is, for the most part, unrealistic for the contemporary school business official. In this time of rapid change and litigiousness, school administrators in general, and school business officials, in particular, need to understand the legal context in which they operate.

Two levels are involved. First, there is the matter of power and authority. Most simply stated, what does the school district, and the administrator who acts on its behalf, have the power to do? With the variety of participants acting in the public schools—teachers, administrators, parents, students, policy makers—there is a certain confusion about who has how much authority to do what to one another. A basic understanding of the governmental organization of the school district and a passing acquaintance with the variety of legal sources which can control a particular relationship are fundamental to defining one's particular authority. In certain circumstances, the relationship between parties will be bounded by the statutory authority granted to the school district by the state legislature; this is authority limited by the state and federal constitutions. Additionally, considerable latitude exists for the school district to bind itself and other persons and entities to contracts. The district also has responsibilities to protect the health and safety of its students. The scope of the relationship can be identified as a particular legal source: statutory, regulatory, constitutional, contractual or tortious. And these relationships are significant conceptually because they have implications for potential liability and define the scope of power and authority enjoyed by particular actors.

BEST COPY AVAILABLE

EA 019 302

A second level important in understanding the legal context of school business is an appreciation of the legal process. At a very simplistic level, a difference between statutory law and judge-made case law exists. Some passing acquaintance with statutes and cases help the school business official be a better consumer of legal information. There is a skill involved in reading a case, relating the facts of the dispute to the conclusion or holding of the court, and then relating this case to other similar cases so as to articulate a general standard of acceptable behavior. Knowledge of the legal process involves learning the importance of several types of priorities: authority, court and time.

Sources of legal authority range from written federal and state constitutions, statutes, administrative rules and regulations and judge-made law. Constitutions have the highest priority followed by statutes. Judicial decisions involve interpretations of constitutions and statutes and the development of legal principles. Part of the Anglo-American jurisprudential heritage has been this deference to judge-made law, known as common law. This common law has been particularly significant in the development of contracts and torts principles. Although more and more of this common-law area is being controlled by statute, it is still an area in which case law can make for enforceable standards of expected behavior. Finally, administrative rules and regulations explicate the obligations and standards of administrative agencies. These rules and regulations have the full force of law so long as they are authorized by legislation and are not in conflict with governing constitutions, statutes or court decisions.[1]

The American judicial system involves appellate review of legal claims. The trial court is responsible for determining questions of fact, and if an appeal is made it is made on a matter of law. The consumer of judicial decisions must read the decision of the highest court which has ruled on the matter.

The priority of time refers to reading the most recent decision. Although the principle of *stare decisis*, or precedent, is fundamental to the operation of American jurisprudence, there are times when the highest courts at the federal and state level reverse earlier decisions. These are times when, in trying to understand what a series of cases means, attention to the date of a particular decision is critical.

As one becomes more knowledgeable about the legal process one becomes increasingly attentive to the facts of a particular matter and to the jurisdictional constraints that surround judicial decision making. Consider, for example, the not unusual circumstances, where a school business administrator from state A, describes for an administrator in state B, a particular judicial decision which allegedly has the potential for drastically changing the way he or she performs a certain task. Before he or she changes the practice too fast he or she will probably want to know the facts of the dispute litigated and compare these to the way procedures operate in his or her district, know the source of law applied to the facts and determine whether the same or similar law applies in his or her jurisdiction.

An administrator's knowledge of legal process is no substitute for the expertise of attorneys. Increased legal knowledge by school business officials is not proposed as a substitute for legal advice form attorneys. Legal expertise is necessary. This chapter is premised upon the belief that knowledge of the legal process makes one a better consumer of legal expertise; so that one will have a better sense of knowing when to ask for advice, and what type of questions to ask. One can then better practice preventive law by shaping policies and practices to avoid litigation while accomplishing the educational objectives of the district.

This chapter is organized into three parts. The first considers the local school

district as a legal entity; the second examines other places of authority or power which influence the operation of the local district. The third part provides a brief overview of potential liability for failure to comply with a particular requirement.

Throughout the chapter a number of cases are cited because they provide examples of the kinds of disputes that are being litigated which involve school business officials; they help explain certain legal principles. The nature of the disputes will change, but the underlying question of authority or power will most likely be at the center of much future litigation. Does the school district have the authority to do such-and-such in this way? Does a procedure violate a constitutional limitation or a federal or state statutory provision? Attention to the existence of appropriate authority is necessary when a school district tries to respond to different circumstances and different needs. And there are times when the district is simply challenged with litigation by a disgruntled parent or citizen. So, whether one is a creative administrator attempting to develop new responses for educating children or an administrator faced with taking an action that a certain constituency disapproves of, the administrator will want to be attentive to matters of power and authority.

The Local School District as a Legal Entity

In this federalist system, the state and national governments have financial resources which can be made available to public schools. Traditionally, public schools have been viewed as primarily the responsibility of the state. The federal Constitution does not specifically mention education as one of the powers of the United States, and therefore the language of the Tenth Amendment which specifies that "powers not delegated to the United States by the Constitution . . . are reserved to the States . . ." gives the state primary responsibility. The federal government has provided some resources for public schools under authority from the general welfare clause of Article I, but this money, generally made available to further specific social policies, meant school districts had to meet certain guidelines to qualify.[2] Even though the federal government has become financially involved in education, there is no question about the primary responsibility for education falling on the state.

Authority to Act

The state legislature has plenary power in education and in establishment of educational policy, and this power is limited only by the federal constitution and the state's own constitution. This plenary power allows the state legislature to delegate authority, normally to state administrative agencies or local boards of education in the area of education, and to alter or revise its delegation. Except for Hawaii, which operates only one state-wide school district, the states have delegated major authority to local school districts for the provision of public education. The operation of these schools is enough of a routine that there is seldom a question of authority or power. But when a school district faces a new type of problem and wants to develop a policy about the problem which goes beyond anything that has been done before, there can be a question about whether authority exists for such action. Or, when a school district takes a certain action which upsets a certain constituency of the district, this constituency will consider legal challenges to the

proposed district action. One of the most common challenges will be to the district's authority to undertake such action.

Consider, as an example of this second type of question about authority, a legal challenge made by a disgruntled group of parents upset by a particular decision similar to one that many boards of education are being forced to make: the closing of a school. Due to declining enrollments the board of education in a high school district of eight high schools foresaw the probability of having to close one high school. Utilizing recommended practices for such a school-closing decision, the board appointed a citizens' advisory committee to develop criteria to guide the decision. The board adopted the criteria—which, for example, included retention of the schools that accommodate the most complete selection of programs for students, have low operating and maintenance costs, minimize student busing, accommodate the physically handicapped and are located in areas with the largest potential for growth in student enrollment—and directed the administration in conjunction with a consulting firm to apply the criteria. In late April the board received a report ranking the schools for closing according to the twelve criteria. The board continued to reassess the rankings and seek more information until a mid-May meeting when it finally approved the closing of a high school which had appeared third on the original list of schools reported to the board. Suit was brought against the district seeking an injunction thus halting an implementation of the school-closing order on the grounds that the decision was arbitrary and capricious because the board failed to comply with the criteria it had adopted in making the final closing decision. The trial court found that such a decision was arbitrary however and the appellate court reversed on appeal. The appellate court held that the state legislature delegated authority to close schools to the local school board. Since the board had no authority to delegate its responsibilities and duties in administering the school closing to an advisory committee, the court held, *inter alia*, that, "the board acted within its discretion in the (school closing) and concluded that to require a strict application of the criteria prepared by the several committees would impermissibly subordinate or limit the discretionary powers vested in the board by the legislature."[3]

The question of appropriate power or authority can be critical in determining what actions a particular board or state agency can make. The following sections consider several important themes that run through this area of the law, and provide several recent examples of litigation where these themes have been used by the court in deciding the case.

Legislative Delegation of Authority

The rule applying to the state legislature's authority to delegate is much easier to state than it is to predict the court's application of it in specific circumstances. The rule is that the legislature may delegate by statute administrative powers to administrative agencies in the executive branch of government, but may not delegate law-making or legislative powers. The rationale for this distinction between legislative and administrative delegation is drawn from the constitutional distinction between legislative and executive powers. The transfer of legislative authority to administrative agencies would dilute legislative autonomy and threaten the basic principle of separation of powers central to our constitutional system. In addition, this would tend to put the decision maker out of reach of the electorate, the important political check that exists in our democratic system. As matters become more complicated

it is impossible for the legislature to administer vast and varied administrative agencies which are ultimately under its authority. Therefore, courts, in distinguishing delegable administrative power from nondelegable law-making power, search the enabling statutes for reasonably precise guidelines which might describe the policy objective(s) of the legislature or guide an administrator's discretion in implementing the legislative goal. The general legal theory is that the delegation is valid so long as the statutory guidelines limit the discretion of the administrators and do not allow for administrative judgment to be substituted for that of the elected legislators.

The application of this rule is much more difficult to predict. Particular cases include passages that describe some of the elements that go into the balance. For example, consider the following:

> The line separating that which is purely regulation, and that which is purely legislation, is necessarily indistinct, and becomes more so as the line separating such authority is approached. Therefore, courts . . . will resolve the doubt in favor of the validity of the [delegating] act rather than holding it invalid . . . which is especially true when the [administrative] act is essential and necessary for carrying out the broad purpose and intent of the Legislature.[4]

As this suggests, it is important to identify the subject matter of the legislation, the specificity of guidelines surrounding the legislation and the extent to which other interests (either individual interests which may be protected by the constitution or group interests that may be dealt with in other legislation) are present. Finally, there seem to be differences from state to state on how courts will treat this distinction.

One vivid example of this difference between states is in the area of collective bargaining. Confronted with the question of whether local school boards, absent express statutory authority, could recognize a labor organization as an exclusive representative of a group of public employees and negotiate and enter into binding contracts with the organization regarding terms and conditions of employee employment, the courts of Illinois and Virginia reached opposite conclusions. An Illinois appellate court held that local school boards had such authority.[5] Yet in 1971, the Virginia Supreme Court applied the Dillon rule of strict construction that allows local public bodies to exercise only those powers conferred expressly or by necessary implication by the state legislature to conclude that collective bargaining was not authorized.[6] Presumably, the labor history of a state is not lost on the judiciary's decision about what test to apply.

Even when powers are appropriately delegated, it can be difficult to know how those powers will extend. Consequently, courts are often called upon to determine whether the administrative body has acted beyond its legally delegated authority. It is easy to read the statute and determine what has been expressly authorized to the administrative agency. But, since many statutes also provide broad discretionary power (which may be necessary for the proper and efficient management of public education) the courts will recognize implied power to act in certain ways (which may be necessary to accomplish the desired legislative policy during changing times and conditions). Yet there comes a point at which the desired authority goes beyond the intent of the statute, when it moves past being an implied power to being a nondelegated activity which is illegal.

Because these general principles of legislative authority and proper delegation of power are widely appealed to, it is instructive to consider some recent cases

involving these issues. The Michigan Supreme Court held that early retirement benefits, although not salaries, were working conditions within meaning of the school code.[7] Consequently, the Board of Education had authority to provide for such benefits in its collective bargaining agreement with teachers, an agreement that did not violate the state constitution.[8]

With the financial health and subsequent vitality of local school districts so dependent upon the state-aid formula, it is not surprising that local districts have attempted various ways of influencing this formula. Two recent attempts, one in Michigan where a local district sued the state, and the other in Colorado, where the district became actively involved in a campaign in a proposed referendum to amend the state constitution, were held invalid. A Michigan appellate court held that school districts do not have standing to sue the state on claims regarding the constitutionality of state financing schemes.[9]

> [School districts] are given no power, nor can any be implied, to defy their creator over the terms of their existence. They surely have no power to bring suits of such nature on behalf of residents within their boundaries, or to extend public funds to finance such litigation of, or on behalf of, private citizens.[10]

In an earlier case,[11] a Michigan court rejected a school district's attempts to challenge the constitutionality of a statute governing school district reorganization. The Michigan appellate court cited this earlier case as authority and concluded that the school district had limited authority to challenge the state.

> The policy of the state has been to retain control of its school system, to be administered throughout the state under state laws by local state agencies organized with plenary powers to carry out the delegated functions given it by the legislatures . . . we do not believe plaintiff is a proper party to raise the question of whether or not its residents have the right to vote on the transfer. This right, if existing at all, would exist in the voters and not in the school district. Plaintiff school district is an agency of the government and is not in a position to attempt to attach its parent.[12]

In the second case, a Colorado school district made cash expenditures and in-kind contributions publicly to oppose a proposed referendum to amend the Colorado constitution regarding elector approval of new or increased taxes. This action was challenged as a violation of the State Campaign Reform Act which said, in the pertinent part, "No [board] shall make any contributions or contributions-in-kind in campaigns involving the . . . election of any person to any public office. They may, however, make contributions or contributions-in-kind in campaigns involving only issues in which they have an official concern." The Appellate Court affirmed the trial court in holding that cash and in-kind contributions for this referendum violated the statute.[13] The specificity of this Campaign Reform Act controlled any implied authority the district claimed under the statutes. In addition, no First Amendment right of school districts to speak on public issues applies to these facts. Finally, no official concern existed which authorized such expenditure. A matter of official concern must minimally involve questions which come before the officials for an official decision. Since a change in the tax scheme would not cross school administrators' desks for approval, the act was not considered an official matter.

A North Carolina case involved a challenge about the appropriate authority of a school district to initiate an extended day-care program to more adequately satisfy

the different home needs of many of its latch-key students. The case provides a good example of what the court found important in deciding whether such action was authorized.

A school district initiated an extended day program which, for a fee that supported the program, provided activities after school for children that might not have parents at home at 2:30 p.m. upon completion of the normal school day. The only costs to the school district were fuel and lighting costs associated with use of the building. A coalition of day-care center operators challenged the authority of the school district to initiate such a program. The North Carolina Court of Appeals held that the school district had the authority under state statute to operate such a program for latch-key children.[14] Additionally, the court upheld the authority of the school district to expend money for heating and lighting the building for the benefit of these extended-day pupils as a public benefit. The program provided academic improvement for many students. Because the school board had the authority to absorb the fuel and electricity costs of the program (it was for a public purpose, to improve the educational achievements of latch-key children) the court rejected the contention that the expenditure must be approved by the voters in a referendum.

As school districts are financially strapped, they seek alternative avenues for funding. One apparently attractive source is the generation of new, different taxes. These newly imposed taxes seem to be challenged often, and they are not popular in the courts.

A Pennsylvania school district imposed a tax of one percent of the construction cost for the "erection, alteration, repair, renovation, extension or replacement of any building or improvement to real property." The state statute which authorizes such taxing authority grants the court the authority to invalidate such a tax if it is excessive or unreasonable. The Pennsylvania Commonwealth Court held this tax was unreasonable because it singled out new homeowners and remodelers to bear the cost of additional school support.[15] The tax was held to be an unreasonable alternative to raising additional money for supporting the public schools through an increase in the real estate tax millage.

A county school board in Florida imposed a discretionary two-mill tax levy allowed by law. A Florida district court of appeals upheld a challenge to this levy, overturning it on the basis that the levy was illegal and therefore void, because the district had not satisfied the statutory requirements in publicizing the intended levy and allowing an opportunity for community response.[16] For example, one of the statutory requirements involved specific notice about intended use of the money. "Such notice shall specify the projects or number of school buses anticipated to be funded by such additional taxes. . . . "[17] The district court of appeals rejected the school district's claim that there was substantial compliance with the statute. When the taxing power is exercised by a tax authority which does not have inherent power to tax, courts read the statutes granting the tax power strictly. Failure to comply with a statute authorizing a levy is generally considered not just an irregularity, but an omission which invalidates the tax.

A Texas court of appeals held that a school district has no interest or implied authority to levy taxes for maintenance of schools.[18] Authority to levy taxes must arise from some affirmative grant of power from the constitution or the legislators. In Texas, a school district which had validly split from another school district had no power to assess or collect *ad valorem* taxes, since qualified voters of the district had never voted to approve the tax.

A school district passed a resolution to recommend a tax exemption for a proposed hotel resort, in return for the hotel owner's contractual offer to pay all of the assessed taxes in lieu of actual taxes—if gambling were legalized in the state and if the owner were to institute gambling in the hotel. This resolution was declared null and void because, as a matter of law in New York, the legislative body could not bargain away or limit its future powers by a contract which is based on speculative future events.[19]

Appropriate Administrative Delegation of Authority: Redelegation

The law is clear that an administrative agency may not redelegate those discretionary powers conferred upon it to another body or a subordinate employee. In the public school context this standard is most significant in limiting the actions to which an employee of the district can legally bind the district when the board of education has not officially taken action. Some cases distinguish between the ministerial actions of employees, those which are purely mechanical and therefore legitimate, and those which are discretionary and are therefore not proper. Once again it is instructive to consider several recent cases where the delegation principles have been used to resolve a dispute, usually over whether the district is bound to an agreement that an administrator made with a third party on behalf of the district.

A North Carolina appellate court articulated who had the authority to make contracts. "Under the system of public education in this state, local school boards alone have the duty or authority to enter into or authorize purchases or supplies and equipment for the respective local school systems."[20]

A supplier of merchandise for sale by students could not sue the district for the value of unsold/unreturned merchandise when the school board had not entered into the contract. The action of the high school principal could not obligate the school board. In addition, the law recognizes that public officials are deemed to have notice of the limited nature and extent of the authority of principals or other school officials to bind the board of education. Consequently, an argument that the principal had apparent authority to bind the board of education to the contract was rejected.[21]

An Ohio court of appeals reversed a trial court verdict which had awarded almost $20,000 to a supplier of word-processing equipment.[22] The Cleveland School Board had approved purchase of the equipment; it had been ordered by the director of purchasing and a certificate has been signed by the treasurer stating that unencumbered funds were available for the expenditure. About two months later, the business manager learned of the contract and determined that the equipment would not meet the educational needs of the district. The contract was canceled and the board passed a resolution rescinding the purchase. Ohio has two applicable statutes; one applies generally to any subdivision of the state and requires a certificate of the fiscal officer of the subdivision; a second, applying specifically to school districts, requires a certificate signed by the treasurer, president of the board and superintendent. The court of appeals held that this contract for the word-processing equipment was void because the certificate did not contain the requisite three signatures, even though the Cleveland school district did not follow this procedure with most of their expenditures. The vendor was held responsible for knowing the provisions of the statute, and as in this case where the purchase was not routine and might involve the purchase of further equipment it was appropriate for the district

to require compliance with the more specific statute. Therefore the contract was void and unenforceable.

A student in the junior class of a Louisiana high school decided to rent a sound system and have a disc jockey play records for the junior-senior prom, rather than employ the more traditional band. A disc jockey was selected and a contract signed by one of the two class sponsors after discussing the matter with the building principal. When the principal later discovered that he was hiring a sound system rather than a band, something he apparently did not understand at the time of the signing, he tried to break the contract because he did not think it appropriate for the prom. In an action for damages for breach of contract, a Louisiana appeals court held that the school district was liable for the amount of the liquidated damages clause stated in the contract.[23] The court held that the principal had implied authority to represent the school board and that this authority was properly delegated to the faculty sponsor who actually signed the contract. Because the principal was properly exercising his authority as principal, the school board was a party to the contract and could be held liable for its breach. In addition, there was no personal liability on the principal, even though he broke the contract, because he was acting on the implied authority given him by the school board. There is no Louisiana statute limiting the authority of the district to be bound by contract only upon certification approval and signature by the board, as exists in other states.

A coalition of parents, students, and residents of the "west side" of Kansas City protested the closing of the local high school. Not getting the desired response about reopening the high school with higher quality and with more community control, the coalition occupied the school to try to force an accommodation from the board. The superintendent met with the group and reached an agreement to establish a community-sponsored experimental high school in the building, to start in approximately one year. About two months before the experimental high school was to open, and after considerable preparation had gone into the planning for the school, the superintendent decided that financial constraints would not allow the opening of the experimental school as planned. The coalition of parents sought specific performance of the agreement, which had been adopted, to open the experimental school. The Missouri court of appeals affirmed the trial court in holding that the agreement was an invalid contract.[24] The central issue was whether this agreement was an exercise of the district's proprietary functions or governmental functions. The general rule is that a municipal corporation may, by contract, limit the exercise of its proprietary functions but not its governmental functions. The appellate court held that the decision to open a school, which had been given up in the agreement with the coalition, was governmental since it goes to the heart of the educational process.

> This is the very function for which school districts exist—not building buildings or operating playgrounds or even hiring teachers—but deciding where and if schools are needed to educate our children. This is not to say that a district may not be able to contract for advice on this question, but to contract away the power ultimately to decide whether certain educational facilities should remain open to serve the district's children is to give up the most basic function of all.[25]

Consequently, the agreement was not enforceable because the district was not empowered to contract away this authority to close a school.

The delegation doctrine can also be important in hiring and firing decisions. A South Dakota district, for example, had an unexpected resignation in late August. The position was announced and a candidate visited the district and interviewed for the position. The candidate was told he would have a two-week trial period, since the board was not scheduled to meet before then. The candidate refused the position on a trial basis, so the contract was prepared, and he accepted by signing the contract. Before the contract was signed by any board members, the new teacher had trouble with his class, and the district refused to approve the contract and terminated him after nine days of teaching. The South Dakota Supreme Court held that no contract existed because the contract had not been signed by the appropriate district representative as required by law. "A teacher shall be employed *only* upon written contract signed by the teacher and by the president of the school board and business manager of the school district."[26] The court did award compensation for moving expenses and housing costs which were incurred because of detrimental reliance on the teaching position. Once again, contracts can only be formed according to the specific standards stated in law.

An Illinois appellate court held that a decision not to renew a superintendent's contract, and to determine that notice of the board's intent not to renew the superintendent's contract should be given, are nondelegable and must be done by the board.[27] Yet the functions of the drafting the written notice and the reasons for nonrenewal and of delivering that notice are ministerial, and therefore, delegable. The hiring and firing of teachers, and determination not to renew contracts, are not delegable because they are discretionary.

Shared Authority With Another Administrative Agency

Occasionally a conflict will arise when one administrative agency seeks to take action which impinges upon the authority of another administrative agency. In our highly regulated world and during a period of rapidly changing circumstances, this conflict over turf is not unusual. Normally, courts resolve these disputes by identifying the particular activity and determining which administrative agency has this problem as a more central responsibility.

Once again, several cases provide recent examples of the types of disputes that arise and how the courts resolve them. One type of conflict is between a municipality operating under home-rule authority and a school district. The general rule is that education is a matter of statewide concern and does not come under the control of a municipality operating under a home-rule charter. A similar rationale was used, for example, when an Illinois appellate court held a school district, in the process of erecting a school building within a municipality, is excepted from the building code of the municipality.[28]

A California court considered this relationship in greater detail. It said that local authorities have the power to regulate a municipal affair. Yet state law prevails over local ordinances with regard to local matters if the subject matter is also of statewide concern. In the event of conflict between regulations of state and local governments, if the state legislation discloses an interest to preempt the field to the exclusion of local regulation, the question becomes one of predominance or superiority, which the courts will decide.

The court determined that state legislation set up a scheme for developing new and improved schemes for financing interim school facilities. This is a matter of

statewide interest, and the court held it to preempt the authority of the school district to limit or control development in any additional way.

> The express authority to impose school impact fees and dedication upon developers under [the California statute] is broad in its scope, applies to all schools but narrowly restricts the amount and use of such fees. To permit local entities to impose further broader fees or further burdens on developers for new school construction would be to write into this very comprehensive plan for school finance of new school construction a complicating feature, having statewide ramifications never suggested. Indeed, it could have extremely adverse effect on urban development generally. There is preemption in the legislative scheme we consider here, precluding the county, district and board from collecting the fees from developers for permanent school facilities.[10]

An Ohio board of education voted to purchase electrical energy from a different company than the one supplying electricity to the rest of the municipality. The municipality challenged the authority of the school district to make such a purchase. The Ohio Supreme Court interpreted the Ohio Constitution to grant exclusive authority for the contracting of public utility services to municipalities.[11] Consequently, although there is no explicit limit upon the school district's power to purchase electrical energy, the court held that the grant of authority to the municipality means that school districts are prohibited from contracting for public utility services, absent the express consent of the municipality. To do otherwise would limit the ability of the municipality to obtain the best utility rates for its residents.

Another area of recurring conflict exists between school districts and other governmental bodies responsible for collecting and distributing tax moneys. A recent issue in several states involves allocation of interest earned on tax moneys. A Missouri case provides one example. The allocation of interest money earned between the county collector of taxes and the various governmental bodies is a matter of state law. The Missouri Supreme Court, *en banc*, reaffirmed its position that interest on deposited school funds is payable to the treasurer of the school district, and is not to be credited to the general revenue fund of the county.[11] The court also refused to soften the application of the statute by allowing the county to pay all of its interest expenses out of interest revenue earned on all moneys being held by the county before distribution. No legislative authority existed to charge the interest cost of borrowing tax anticipation warrants back against the districts; therefore, the county collector of revenue was ordered in a *mandamus* action to reimburse the school district this charge for interest.

Two Arkansas cases involved the allocation of the collector's commission and the allocation of certain fees incurred by the county assessor and collector. In one case involving the appropriate allocation of the collector's commission, the Arkansas Supreme Court held that the commission must be based upon expenses related to the collection of tax revenue (not for expenses related to the accompanying sheriff's office).[12] Any extra money would be returned to the local school district.

In a second case, the Arkansas Supreme Court held that the office-rental charge for the county assessor and collector was one for the county rather than for assessor and collector, and could not be recovered from the school district through the county board of education's school tax collection account.[13]

Finally, the Massachusetts Supreme Court held that the mayor of Boston is responsible for keeping the school committee within its authorized expenditure.[14] If the mayor does not, the city is responsible for the additional money necessary to

keep the schools open for the statutorily mandated *minima*. The state is not financially responsible.

Other Loci of Authority or Power

Before 1950, school administrators did not need to be knowledgeable about legal matters much beyond what was written in the school code. And these statutes were considerably leaner than they are today. If the actions of these administrators were challenged, they would likely have been based on the question of proper delegation of authority. How times have changed.

The explosion of school law in the last twenty five years is really a story about the expansion of different sources of authority. During this period there has been a marked increase in the applicability of constitutional standards to school matters.[15] In addition, the amount of federal and state legislation affecting schools has increased dramatically.[16] This legislation provides avenues for new resources to encourage equity, and thereby also tends to limit the discretion of boards and administrators in the operation of certain aspects of the school. State departments of education seem to be more aggressive recently in trying to shape school policy. And the expansion of public-sector collective bargaining has caused the contract to be an important legal source in matters of teacher and administrator employment.

To the uninitiated, this cataloging of many different sources of legal authority may appear irrelevant to what an administrator does in the school. In reality, the variety and range of these legal sources are quite important. Different sources of authority carry different degrees of weight. For example, because of the supremacy clause of the federal Constitution,[17] the federal Constitution takes priority if it should come into conflict with state or federal statutes, state constitutions or administrative rules and regulations. These various legal authorities may also be significant because the range of protection can differ widely. The various legal authorities also provide quite different standards of damages. This will be briefly explored in the third part of this chapter.

The remainder of this part will consider the most salient sources of authority—constitutions, state offices of education, federal statutes and contracts. Several examples of case law will be provided to elaborate how the sources apply to school matters.

Written Constitutions

Constitutions are the highest form of law, and take priority over conflicting legal sources such as statutes or administrative rules or regulations. A 1981 South Carolina Supreme Court is instructive on this relationship between the Constitution and statutes.[18] The case dealt with the unconstitutionality of appointed school boards fixing and determining the amount of tax to be levied for school operations as not satisfying the constitutional standard of no taxation without representation. The court stated several principles of law regarding constitutional challenges to statutory enactments that apply to federal as well as state constitutions.

> Our Constitution is not a grant of power, but a limitation on what, absent limitations therein, would be a plenary power in the people or their elected representatives. Accordingly it is not sufficient to find that an act is offensive

> to what may be prevailing notions of the proper sphere for state governments. It is necessary, in order for us to strike down an act of the General Assembly, to find that it offends specific provisions of the state constitution which have limited and circumscribed legislative action in that area.
>
> [A]ll reasonable doubt must be resolved in favor of the constitutionality of the act. If a constitutional construction of a statute is possible, that construction should be followed in lieu of an unconstitutional construction.[39]

Constitutions are usually written sparsely, with few words used to articulate broad principles, thus allowing for considerable latitude for judicial interpretation. In this federalist system, both the federal Constitution and state constitutions provide important sources of authority in the operations of schools.

Federal Constitution

The Fourteenth Amendment of the federal Constitution has had a major impact upon public schools because of the significance of both the due-process and equal-protection clauses and the amount of litigation spawned through their interpretation. In addition, the Fourteenth Amendment has been the vehicle used to apply the protections of the Bill of Rights—the first ten amendments, which were approved to limit the authority of the federal government over individuals—to the state and the administrative agencies of the states, such as public schools. The operative language of the Fourteenth Amendment limits the actions of states: "No state shall deprive any person of life, liberty or property without due process of law." And the same limitation upon denial of equal protection under the law is made upon the state. The significance of this limitation is considerable. Constitutional rights under the first ten Amendments and the Fourteenth Amendment are rights against the intrusion of governmental power, not against individuals; that is, it is necessary for an aggrieved to allege that the constitutional violation occurred under state action. If a private individual committed the wrong, no matter how grievous, there is no cause of action under the Fourteenth Amendment.

An elaborate analysis of what constitutes state action is beyond the scope of this chapter.[40] It is sufficient to understand that public schools, which by definition receive their budget sources from public moneys, do engage in state action and are therefore responsible for complying with the federal Constitution. Private schools are not involved in state action and do not have to meet equal protection or due process standards, for example. Private schools may well decide to meet these standards, but such compliance is not a matter of constitutional compunction.

A few examples of disputes that involve constitutional questions may be instructive. All four disputes involved statutes which were challenged as being unconstitutional.

A Pennsylvania case involved a challenge to an amendment of the state retirement code. The amendment required members of the retirement system to contribute an additional percentage of their salary to the retirement fund. A Pennsylvania Commonwealth Court held that this amendment was an unconstitutional impairment of employee's right to contract.[41] A similar statute in Maryland, when challenged, was upheld as constitutional.[42] Presumably, more litigation will follow.

In *Plyler v. Doe*, a majority of the court held that a Texas statute which withheld from local school districts any state funds for the education of children who were not "legally admitted" into the United States and which authorized local school districts to deny enrollment to such children violated the equal protection clause.[43]

The majority said that this type of discrimination (denial of education) is not rational unless it furthers some substantial goal of the state. A special concern was voiced about the denial of education rather than other types of governmental benefits. The majority held that the reasons given by the state were not compelling:

1) Exclusion of children from school represents a major cost to the children and the nation. "Whatever savings might be achieved by denying these children an education, they are wholly insubstantial in light of the costs involved to these children, the state and the nation."[44]
2) Denial of public school access to children of undocumented aliens will not have the alleged effect of discouraging illegal aliens from entering the country.
3) Savings from denial of this education will likely improve quality of education for remaining students. "In terms of educational cost and need . . . undocumented children are 'basically indistinguishable' from legally resident alien children."[45]

Representation on a New Jersey board of education for a regional high school was determined by the population of the underlying boroughs. When representation was recalculated according to the 1980 census figures, the borough slated to drop from two to one board members challenged the constitutionality of the state statute; it removes military personnel and civilians residing within military installments from being counted in the apportionment. A New Jersey superior court held this exclusion violated the equal-protection clause, and therefore voided this particular reapportionment.[46]

A bond election in Texas, passed by the electorate, was challenged on several grounds: the unconstitutionality of the election statute, the misleading information given about the tax rate and the legal limitation to be placed upon the interest rate. The Texas court of appeals held that the election was constitutional because the district did not enforce the unconstitutional property ownership and rendering requirements of the pertinent statutes when it held the election.[47] The actual rate of interest for the bonds was legal because it fell within the limits of the proposed referendum, even though the rate turned out to be higher than school officials predicted at the time of the election. Finally, the court held that the referendum established that the maximum rate allowed by law for the bonds would be determined at the time of issuance, not at the time of referendum.

State Constitutional Sources

The cases just described demonstrate how significant federal Constitutional standards can be in limiting state statutes, and how state court judges are authorized to interpret the federal Constitution just as federal judges are. When there is disagreement, the U.S. Supreme Court controls. A parallel does not exist for state constitutions. The state constitution is the supreme law of the state, and federal judges do not have authority to interpret state constitutions.

As discussed in a later chapter, there has been a tendency for state courts to become more expansive in interpreting the reach of certain state constitutional language at about the same time that the U.S. Supreme Court has become more restrictive in its interpretation of the U.S. Constitution. In 1974, the U.S. Supreme Court held in *San Antonio School District* v. *Rodriquez*[48] that widely disparate levels of state support for students in different districts (because of widely divergent property wealth among these districts) did not violate the equal-protection

clause. Despite this ruling, several state courts examined their respective state school financing formulas under their state constitutional standards and found them wanting. California[48] and New Jersey[50] were in the vanguard of this movement. This use of the state constitution to scrutinize the state school funding formula continued beyond California and New Jersey.[51] Yet, as the following cases indicate, there has been greater reluctance recently by state courts to declare school finance schemes unconstitutional.

The Georgia Supreme Court held that the "adequate education" provisions of the state constitution did not restrict local school districts from doing what they can to improve educational opportunities within the district, nor do they require the state to equalize educational opportunities among districts.[52] The court deferred to the legislature to give specific content to the term "adequate" as used in the "adequate education" provisions of the state constitution.

The Colorado Supreme Court, reversing the trial court, refused to declare the Colorado system of financing public schools unconstitutional.[53] The Colorado Constitution requires the general assembly to establish "a thorough and uniform system of free public school throughout the state." Yet, this requirement does not require absolute equality in educational services or expenditures.

The court of appeals of Maryland reversed a lower-court ruling which held that the Maryland school finance system was unconstitutional.[54] The court of appeals held that the Maryland system of financing public schools violated neither the federal nor state equal-protection clauses, and that the Maryland constitutional clause requiring the General Assembly to establish a thorough and efficient system of free public schools throughout the state, and provide by taxation, or otherwise, for their maintenance does not mandate exact equality of per pupil funding and expenditures among the school districts.

The Michigan court of appeals affirmed the trial-court decision which granted summary judgment to defendants.[55] The court upheld the constitutionality of Michigan's school financing system which, although it provides differential levels of support per student because of differential levels of property wealth behind the students, is not deemed a violation of either education as a fundamental right or equal-protection clauses of the Michigan Constitution.

Another area in which state constitutions matter is in giving substance to the meaning of providing a "free public education." The operational interpretation given to this or similar language (which appears in many state constitutions) varies widely from state to state. Some states interpret this to mean that textbooks are included and must be provided free of charge[56] while other states take the opposite view.[57] Litigation has expanded beyond textbooks. Illinois courts allow charging a rental fee for optional towel use in a high school physical education class[58] and for assessing a lunchroom supervision fee to parents who live close to school yet whose children bring lunches to eat at school.[59] The California Supreme Court, in contrast, held in a 1984 decision that school districts were constitutionally prohibited under the free-school guarantee from charging fees for students' participation in dramatic productions, musical performances and athletic competition.[60] This broad state constitutional language can have a significant impact upon the financial management of a district; this situation varies widely throughout the United States.

State Boards of Education

State boards of education are important sources of authority. These boards differ

on where they draw their legitimacy: about half are created by statute and half by state constitution.[61] Even when they are created by state constitutional authority, the state board of education is subject to the commands of the legislature. Consequently, state boards of education derive authority from the state legislators and have authority to do only what is expressly or implicitly delegated to them.

As state boards carry out their perceived responsibilities, disagreements can arise about whether the state board does enjoy such power. Often, such disagreements occur between a state board and a local school district. Two examples provide an insight into how courts analyze such disagreements.

The Illinois Supreme Court, in 1982, had to decide whether the Illinois State Board of Education had authority to promulgate and enforce rules designed to prevent racial segregation.[62] The Illinois legislature passed in 1971 a statute which provided, in part: "As soon as practicable, and from time to time thereafter, the [local] board shall change or revise existing [attendance centers] or create new [attendance centers] in a manner which will take into consideration the prevention of segregation and the elimination of separation of children in public schools because of color, race or nationality."[63] Pursuant to this statute, the state board developed rules to eliminate and prevent racial segregation in schools; these rules were officially adopted by the board in 1976. The most difficult requirement of these rules was that each attendance center in a district not vary by more than 15 percentage points from the minority racial composition of the pupils in all attendance centers. This requirement, in effect, defined nonconformance as a 15 percent plus or minus quota from the district-wide composition of minorities. The state board also identified compliance standards, and noncompliance could lead to nonrecognition and possible loss of state funding. Two school districts could not meet the 15 percent quota in individual attendance centers without instituting busing of students outside the neighborhood schools; they refused to do this, and in fear of losing state aid for noncompliance, the districts challenged the authority of the state board to promulgate such rules.

The state board argued that it enjoyed statutory authority to promulgate such rules because of general language in the Illinois School Code. The Illinois Supreme Court rejected this claim.

> Nowhere in [the statute] is the board granted expressed authority to determine standards for racial desegregation. And the fact that the board may set standards for the 'operation, maintenance, administration and supervision' of schools does not imply the authority now sought. If we were to hold otherwise, it would be difficult to conceive of any regulation which could not be justified under [this statute].[64]

The court also noted that a different statutory section provided a procedure which the board could use in combatting segregation. The 1971 statute did not provide any standard or guidelines governing the board's discretion to enforce the statute. Looking at another section of the School Code, the supreme court was persuaded that the local school district had the authority to decide how to comply with the 1971 statute. The rules of the state board in this area were unenforceable.

A second case (an attempt by the California state department of education to reclaim funds from a high school district) was held to be contrary to the statutory authorization.[65] The high school had been legitimately paid for the vocational students. While the pertinent statutory section prohibited future filing or amended

claim for vocational "average daily attendance" funds, it did not authorize the department of education to retroactively recapture funds paid.

A number of other levels of educational agencies exist in various states. But the powers of these agencies are, like those of the state or local boards of education, only those which are delegated to them. A 1983 New Jersey case provides an example of this principle in application.

A county educational services commission was created in New Jersey "for the purpose of carrying on programs of educational research and development and providing to public school districts such educational and administrative services as may be authorized pursuant to rules of the state board of education." This commission had contracted with a private corporation: the corporation was to furnish the services and programs which the commission was obligated to supply to member school districts. The superior court of New Jersey affirmed the trial court in holding that the contract was void: the county educational services commission had no authority to enter into this contact.[5] The legislature gave statutory authority to boards of education to contract with private corporations, but no such authority was granted to the commission. The court applied the general rule that "municipal bodies in the state have no powers other than those delegated by the legislature, and must perform their prescribed activities within the statutory ambit."[6] A public body may make contracts only within its express or implied authority; therefore, the contract was void.

Federal Statutes

Although public education is predominantly supported by state and local taxing sources, the federal government does channel some money to public schools. Since the passage of the Elementary and Secondary Education Act in the mid-1960s, the federal government has supported a number of programs; many are aimed at supporting the education of needy or handicapped students.

Congress derives authority for passing legislation affecting schools under Section 5 of the Fourteenth Amendment, or Section 8 of Article I. Section 5 of the Fourteenth Amendment authorizes Congress to pass whatever legislation may be necessary to realize the objectives of the Fourteenth Amendment. Consequently, Congress could utilize this authority to require school districts to realize the due-process or equal-protection guarantees, and these requirements would not necessarily have to carry financial support. If Congress is to use this source of authority, such authority would need to be clearly understood as the basis of the legislation.[7] The more common source of authority for federal financial support is Article I, Section 8 of the U.S. Constitution: "The Congress shall have power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States. . . ." Congress decides what expenditures further the general welfare, and the Supreme Court will not interfere with this discretion unless it is "clearly wrong, a display of arbitrary power, not an exercise of judgment."[8] It is currently accepted that improving education is providing for the general welfare.

One contemporary issue which focuses on the federal government involves its attempts to be repaid some of its money, allegedly misspent by the recipient state agency. This issue can best be considered by closely examining two cases.

In a 1983 decision, the Supreme Court articulated the statutory framework for the federal government recovering money received under Title I and improperly

spent.[70] Title I of the Elementary and Secondary Education Act of 1965 created a program designed to improve educational opportunities available to disadvantaged children. The money is channeled from the federal government, to the state, to the local school districts. States give assurance to the Department of Education that local districts will spend the funds only on qualifying programs. If federal auditors determine that a state has misapplied funds, a deficiency can be assessed against the state for repayment. Consequently, the determination of the existence and amount of liability is the responsibility of the Department of Education. The states can seek a review of the auditor's recommendation by the education appeal board. If dissatisfied with the decision by this board, the state can appeal the matter to the appropriate United States court of appeals; the court may decide whether the findings of the Secretary of Education are supported by substantial evidence and reflect application of the proper legal standards.

This procedure was followed in an action brought against Kentucky, and the dispute was appealed through the U.S. Supreme Court. The Secretary of Education assessed a penalty against Kentucky for allegedly misspending Title I program money in 1974. The Sixth Circuit Court of Appeals, reviewing this penalty, held that the penalty was not justified because Kentucky's program complied with a reasonable interpretation of the law and there was no evidence of bad faith on the part of Kentucky in the way the money had been spent.[71] This decision was appealed to the U.S. Supreme Court, which reversed the Sixth Circuit.[72] Both the statute and the implementing regulations in 1974 required that Title I funds be used to supplement, not supplant, state and local expenditures for education. The Supreme Court held that the Sixth Circuit had mischaracterized the relationship between the federal funding agency and the recipient state. A demand for repayment is more in the nature of an effort to collect a debt than it is a penal sanction; therefore, an inquiry into "substantial compliance" is meaningless when inquiring into an obligation to repay misused funds where applicable legal standards exist. Nor does the absence of bad faith absolve a state from liability if, in fact, funds were spent contrary to the terms of the grant agreement. The state chose to accept Title I funds, and it did so knowing the conditions which existed for the receipt of such funds. A majority of the Supreme Court was persuaded that the use of Title I funds for "readiness classes" violated the Title I prohibition against supplanting. The court refused to take a doctrinaire position: either one resolving any ambiguities that might exist against the federal government as the party who drafted the agreement, or one allowing the Secretary of Education to rely on any reasonable interpretation of Title I's requirements to determine that previous expenditures violated the grant conditions. Disputes will need to be resolved on a case-by-case basis.

In an accompanying case, the Supreme Court held that the 1978 amendments to Chapter I did not apply retroactively to prevent the Department of Education from recovering money allegedly misspent in earlier years, but which could have been spent legally after the 1978 amendments to the Act.[73] "Neither the statutory language nor the legislative history indicates that Congress intended the substantive standards of the 1978 Amendments to apply retroactively . . . [W]e find no inequity in requiring repayment of funds that were spent contrary to the assurances provided by the state in obtaining the grants."[74]

Much of the federal moneys that go to public schools has been tied to furtherance of civil rights. Title VI[75] prohibits racial discrimination in schools receiving federal

money; Title IX[76] prohibits sexual discrimination in schools receiving federal money. The legislation links a penalty of loss of federal money to violation of the protected civil right. Litigation involving these statutes has involved two important points. First, a question can be raised about who has authority to sue under a particular statute. The U.S. Supreme Court recognized an individual right of action to sue under Title IX, allowing individuals the opportunity to sue on their own behalf and not be reliant solely on the will of the administrative agency to press a violation claim.[77]

A second question involves the linkage between the civil rights violation and the federal money involved. In a 1984 case, the U.S. Supreme Court held that violation under Title IX must be program specific to be actionable for the withholding of federal money.[78] A violation is not sufficient to reach any money which the government body may receive from the federal government; for federal money to be subject to penalty, the violation must occur in the same area in which the money is being received.

Contracts

A contract is a significant vehicle that a school district can use to obligate itself to another party in exchange for some benefit. These contracts have the authority of law so long as the subject of the contract falls within the power of the district to undertake, and the contract has been properly approved. These issues were raised in the first part of this chapter, and are taken up in subsequent chapters of this volume which focus on particular activities of the school business official. A 1980 case from Ohio does, once again, underline the significance of obtaining official board approval in order for a contract to be binding.

An Ohio board of education formally adopted a tuition policy for nonresident students and formally accepted two sisters pursuant to the policy. The girls continued as tuition students for that year and the next three academic years, even though the board did not formally approve this arrangement for any of these three years. The board revised its tuition policy that eliminated tuition students for the next year; the sisters obtained an injunction from the trial court on the basis that the superintendent had told them that, when the district entered into the tuition student relationship, it would allow the students to continue until they graduated. The superintendent had come to this conclusion after talking with several board members individually. The appellate court reversed the judgment and dissolved the injunction on the basis that no enforceable contract existed beyond the first year. Pertinent state statute says "[n]o contract shall be binding upon any board [of education] unless it is made or authorized at a regular or special meeting of such board." The representations of the superintendent, even though based on conversations with individual board members, did not, as a matter of law, meet the statutory requirements. No binding contract existed.[79]

As discussed in later chapters, contracts between the school district and its employees are very important; and with more states passing laws authorizing collective bargaining, their contracts become especially important. Increasingly, the employment relationship will be spelled out through the teacher contract rather than through board policy.

An interesting issue involved in teacher contracts is the interplay between the contract and board policy. To what extent can board policy supplement contractual provisions? Two recent cases provide examples of this type of dispute. An Arizona

district had a collectively bargained contract with teachers that contained leave provisions and required submission of a "cause of absence" form by the teachers in order to obtain paid sick leave. During the final spring of the contract, negotiations were not going well, and the teachers engaged in a "sick-in." Many absences were due to alleged illness. The superintendent initiated a policy—without prior formal board approval—which required teachers to provide a physician's certificate stating that the teacher was ill; if no such statement was made, the teacher's pay would be docked. The board approved this policy a week later. An Arizona appellate court held that the superintendent's administrative order had no force or effect without prior board approval.[80] The retroactive validation by the board was not effective. The court suggested that the contract controls on this matter, and that the board action has no authority either for retroactive or future application.

In a second case the Illinois Supreme Court had to decide, *inter alia*, the arbitrability of a claim that a board of education had violated a term of the teachers' employment contract.[81] The board had contractually agreed to a sick-leave provision which did not require a physician's certificate after an absence of three days for personal illness. The board subsequently passed a policy which required a physician's statement for any absence of three days for personal illness pursuant to state law. "The school board may require a physician's certificate . . . as a basis for pay during leave after an absence of three days for personal illness." The court held that the state statute did not give the board nondelegable authority to decide on matters of sick leave and thereby make the contractual provision unenforceable; rather, the statute gave the district an option, but the question of whether this policy violated the contractual section on sick leave was properly arbitrable under the grievance procedure.[82]

This interface between board policy and contractual language depends on the specifics of the state collective bargaining statute, the scope of the management-rights clause and mandatory bargaining requirement, and the content of the contractual language in issue. On matters involving employees it is imperative to consider pertinent contractual provisions.

Liability

As discussed in greater detail later in this text, it is important for school administrators to be conscious of various types of authority, or limitations upon authority; not only because they may help explain the scope of the authority or limitation, but also because they have a large impact upon the potential liability of the district. Potential liability varies considerably across several different causes of action. Detailed analysis of this topic is beyond the scope of this chapter, but it will be instructive to suggest a number of dimensions of which the administrator ought to be aware.

First, the availability of certain defenses depends upon the legal cause of action. For example, sovereign immunity acts as a bar against suing the state or state employees in matters of tort. Even though the existence of sovereign immunity differs widely among states, the doctrine is limited to tort liability.

A 1982 Connecticut Supreme Court decision elaborates upon this point.[83] The doctrine of sovereign immunity establishes that states cannot be sued without their

consent. Yet, this doctrine does not bar teacher action against a school district for alleged breach of contract.

In Connecticut, town boards of education are agents of the state responsible for education in the towns, but they are also agents of the towns and subject to the laws governing municipalities. Thus, a local board of education is bound by, and may sue or be sued on contract, in the same manner as municipal corporations. Employment contracts remain the function of local communities, and damages from breach of these contracts would be paid by the community, not the state.

Second, the measure of damages varies from one cause of action to another. Punitive damages are available in torts, not available in contracts and available in those constitutional torts actions against individuals;[84] but they are not available in those constitutional torts actions against municipalities, including school districts.[85]

Third, there is important variation regarding personal liability and district liability. Many states have statutes which assume the cost of financial damages and costs of defending the suit if a district employee should be sued.[86] And, in a constitutional tort, a different standard of liability attaches to an individual than to a municipality. Individuals enjoy a good faith, qualified immunity[87] while municipalities do not.[88]

Summary

This chapter has explored the variety of legal sources that interface in the school context. The origin of these various sources can be important to the administrator who wants to understand the scope and boundaries of authority and possible personal liability. These conceptual frameworks are important to the school business official in trying to shape the school district to be responsive to the educational needs in the final years of the twentieth century.

Notes

1. For a more detailed explanation of these sources of legal authority see W. Valente, *Law in the Schools* (1980), pp. 6-13.

2. Federal lunch money, impact aid and support for educating handicapped students are just a few examples of this federal involvement in education.

3. *Tyska v. Board of Educ.*, 117 Ill. App. 3d 917, 923, 453 N.E.2d 1344, 1351 (Ill. App. 1st Dist. 1983).

4. *Dicken v. Kentucky State Board of Educ.*, 299 S.W.2d 977, 981 (Ky. 1947).

5. *Chicago Division, Illinois Educ. Ass'n v. Board of Educ.*, 76 Ill. App. 2d 456, 222 N.E.2d 243 (Ill. App. 1 Dist. 1966).

6. *Virginia v. County Bd. of Arlington County*, 217 Va. 558, 232 S.E.2d 30 (Va. 1977).

7. *Jurva v. Attorney General of Michigan*, 351 N.W.2d 813 (Mich. 1984).

8. For a similar case see *Robinson v. Joint School Dist. No. 331*, 670 P.2d 894 (Idaho. 1983).

9. *East Jackson Public Schools v. State*, 348 N.W.2d 303 (Mich. App. 1984).

10. *Id.* at 306.

11. *Lansing School Dist. v. State Bd. of Educ.*, 116 N.W.2d 866 (Mich. 1962).

12. *East Jackson Public Schools v. State*, 348 N.W.2d 303, 306 (Mich. App. 1984).

13. *Campbell v. Joint Dist. 28-J*, 704 F.2d 501 (10th Cir. 1983).

14. *Kiddie Korner Day Schools v. Charlotte-Mecklenburg Bd. of Educ.*, 285 S.E.2d 110 (N.C. App. 1981).

15. *Heisey v. Elizabethtown Area School Dist.*, 445 A.2d 1344 (Pa. Cmwlth. 1982).

16. *Wilson v. School Bd. of Marion City.*, 424 So. 2d 16 (Fla. App. 5 Dist. 1982).

17. *Id.* at 19.

18. *Manges v. Freer Ind. School Dist.*, 653 S.W.2d 553 (Tex. App. 4 Dist. 1983).

19. *Citizens to Save Minnewaka v. New Paltz Central School Dist.*, 468 N.Y.W.2d 920 (N.Y., A.D. 3 Dept. 1983).

20. *Community Projects For Students v. Wilder*, 298 S.E.2d 434, 435 (N.C. App. 1982).

21. *Id.*

22. *Cado Business Systems of Ohio v. Board of Educ.*, 457 N.E.2d 939 (Ohio App. 1983).

23. *Hebert v. Livingston Parish School Bd.*, 438 So. 2d 1141 (La. App. 1 Cir. 1983).

24. *Coalition to Preserve Education v. School Dist. of Kansas City*, 649 S.W.2d 533 (Mo. App. 1983).

25. *Id.* at 537.

26. *Minor v. Sally Buttes School Dist. 58-2*, 345 N.W.2d 48 (S.D. 1984).

27. *Daleanes v. Board of Educ.*, 457 N.E.2d 1382 (Ill. App. 2 Dist. 1983).

28. *Board of Educ. v. West Chicago*, 55 Ill. App. 2d 401, 205 N.E.2d 63 (Ill. App. 2 Dist. 1965).

29. *Candid Enterprises v. Grossmont Union H.S. Dist.*, 197 Cal. Rptr. 429 (Cal. App. 4 Dist. 1983).

30. *Village of Lucas v. Lucas Local School Dist.*, 442 N.E.2d 449 (Ohio 1982).

31. *State ex. rel. School Dist. of Springfield R-12 v. Wickliffe*, 650 S.W.2d 623 (Mo. 1983).

32. *Special School Dist. v. Sebastian County*, 641 S.W.2d 702 (Ark. 1982).

33. *Venhaus v. Board of Educ.*, 659 S.W.2d 179 (Ark. 1983).

34. *Board of Educ. v. City of Boston*, 434 N.E.2d 1224 (Mass. 1982).

35. Since 1950 the U.S. Supreme Court has decided an increasingly large number of cases which affect schools. In the three decades between 1920 and 1949, the Supreme Court decided 15 cases affecting schools while in the decade between 1950-1959, 13 cases affecting schools were decided. During the 1960-1969 decade this rose to 22 cases, and then jumped to 73 for the decade of the 1970s. Thirty-eight cases were decided affecting education for the first half decade of the 1980s.

36. During the 1970s and into the 1980s the Supreme Court has decided a sizeable number of cases affecting schools which are based on statutory claims rather than constitutional claims. For example, during the five years between 1980-1984, 38 cases were decided by the Supreme Court affecting education and they were evenly split between those founded on constitutional claims and those based on statutory claims.

37. Article VI, U.S. Constitution. "This Constitution, and the Laws of the United States which shall be made in pursuance thereof and of all Treaties made, or which shall be made, under the authority of the United States, shall be the Supreme Law of the land, and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding."

38. *Crow v. McAlpine*, 285 S.E.2d 355 (S. Car. 1981).

39. *Id.* at 356, quoting from *Bauer v. South Carolina State Housing Auth.*, 271 S.C. 219, 226 S.E.2d 869 (S.Car. 1978).

40. *See, e.g., Rendell-Baker v. Kohn*, _____ U.S. _____, 102 S.Ct. 2764 (1982).

41. *AFSCME v. Commonwealth of Pennsylvania*, 472 A. 2d 746 (PA. Cmwlth. 1984). Also see *Pennsylvania Federation of Teachers v. School Dist. of Philadelphia*, 472 A.2d 479 (Pa. Cmwlth. 1981).

42. Alina Tugend, "Federal Judge Clears Way For Changes In Maryland Pension System," *Education Week*, Oct. 10, 1984, at 5.

43. _____ U.S. _____, 102 S.Ct. 2382 (1982).

44. *Id.* at 2402.

45. *Id.* at 2401.

46. *Borough of Oceanport v. Hughes*, 451 A.2d 966 (N.J. Super. Ct. 1982).

47. *Ex Parte Progreso Indep. School Dist.*, 650 S.W.2d 158 (Tex. App. 13 Dist. 1983).

48. *Rodriguez v. San Antonio Indep. School Dist.*, 411 U.S. 1 (1973).

49. *Serrano v. Priest II*, 135 Cal. Rptr. 345, 557 P.2d 929, (Cal. 1976).

50. *Robinson v. Cahill*, 62 N.J. 473, 303 A.2d 273 (N.J. 1983). For later decisions which refined this decision see *Robinson v. Cahill* IV, 339 A.2d 193 (1975); *Robinson v. Cahill* V, 355 A.2d 129 (1976); and *Robinson v. Cahill* VI, 358 A.2d 457 (1976).

51. See, e.g.: *Horton v. Meskill*, 172 Conn. 615, 376 A.2d 359 (Conn. 1976), *Pauley v. Kelly*, 255 S.E.2d 859 (W.Va. 1979); *Washakie County School Dist. No. 1 v. Herschler*, 606 P.2d 310 (Wyo. 1980); and *Dupree v. Alma School Dist. No. 30*, 279 Ark. 340, 651 S.W.2d 90 (Ark. 1983).

52. *McDaniel v. Thomas*, 285 S.E.2d 156 (Ga. 1981).

53. *Lujan v. Colorado State Bd. of Educ.*, 649 P.2d 1005 (Colo. 1982).

54. *Hornbeck v. Somerset County Bd. of Educ.*, 458 A.2d 758 (Md. 1983).

55. *East Jackson Public School v. State*, 348 N.W.2d 303 (Mich. App. 1984).

56. See, e.g., *Paulson v. Minidoka County School Dist.*, 93 Idaho 469, 463 P.2d 935 (Idaho 1970), *Bond v. Ann Arbor School Dist.*, 383 Mich. 693, 178 N.W.2d 484 (Mich. 1970).

57. See, e.g., *Hamer v. Board of Educ.*, 47 Ill. 2d 480, 265 N.E.2d 616 (Ill. 1970).

58. *Hamer v. Board of Educ.*, 9 Ill. App. 3d 663, 292 N.E.2d 569 (Ill. App. 2 Dist. 1973).

59. *Ambroiggio v. Board of Educ.*, 101 Ill. App. 3d 187, 427 N.E.2d 1027 (Ill. App. 2 Dist. 1981).

60. *Hartzell v. Connell*, 201 Cal. Rptr. 601, 679 P.2d 35 (Cal., in bank, 1984).

61. E. Bolmeier, *School and the State Structure* 116 *(2d ed., 1973)*. For additional details about the organization of the state board in individual states see Valente, *Law in the Schools*, 38-39 (1980).

62. *Aurora East Public School Dist. v. Cronin*, 442 N.E.2d 571 (Ill. 1982).

63. *Ill. Rev. Stat.* 1977, ch. 122, par. 10-21.3.

64. *Aurora East Public School Dist. v. Cronin*, 442 N.E.2d 511, 517.

65. *Fullerton Union High School Dist. v. Riles*, 188 Cal. Rptr. 897 (Cal. App. 1983).

66. *Remedial Educ. and Diagnostic Services v. Essex County Educ. Services Comm.*, 468 A.2d 253 (N.J. Super. 1983).

67. *Id.* at 254.

68. For a case which elaborates the significance of the source of authority behind the statutory requirement see *Pennhurst State School* and *Hospital v. Halderman*, 451 U.S. 1, 101 S.Ct. 1531 (1981).

69. *Helvering v. Davis*, 301 U.S. 619 (1937).

70. *Bell v. New Jersey*, 461 U.S. 773 (1983).

71. *Commonwealth of Kentucky v. Secretary of Education*, 717 F.2d 943 (6th Cir. 1983).

72. *Bennett v. Kentucky*, _____ U.S. _____, 53 LW 4332 (1985).

72. *Bennett v. New Jersey*, _____ U.S. _____, 53 LW 4337 (1985).

74. *Id.*, _____ U.S. _____, _____, 53 LW 4337, 4340-41.

75. 42 U.S. Code, Section 2000(d), *et. seq.*

76. 20 U.S. Code, Section 1681, *et. seq.*

77. *Cannon v. University of Chicago*, 441 U.S. 677 (1979).

78. *Grove City College v. Bell*, _____ U.S. _____, 104 S.Ct. 1211 (1984).

79. *Walher v. Lochland City School Dist.*, 429 N.E.2d 1179 (Ohio App. 1980).

80. *Godbey v. Roosevelt School Dist. No. 66*, 638 P.2d 235 (Ariz. App. 1981).

81. *Board of Educ. of Arbor Park School Dist. No. 145 v. Ballweber*, 451 N.E.2d 858 (Ill. 1983).

82. It is not surprising that the arbitrator found this board policy in violation of the contract.

83. *Cahill v. Board of Educ.*, 446 A.2d 907 (Conn. 1982).

84. *Smith v. Wade*, _____ U.S. _____, 103 S.Ct. 1625 (1983).

85. *City of Newport v. Fact Concerts*, 453 U.S. 247 (1981).

86. *See, e.g., Ill. Rev. Stat.*, 122:10-20.20.

87. *Wood v. Strickland*, 420 U.S. 308 (1975).

88. *Owen v. City of Independence*, 445 U.S. 622 (1980).